UNITED STATES DISTRICT COURT
FOR THE
SOUTHER DISTRICT OF MISSISSIPPI

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JUL 19 2016
ARTHUR JOHNSTON
BY ______ DEPUTY

QUITMAN CARTER	)	
PETITIONER	)	
	)	
VS.	)	Case No
	)	3:16cv565-HTW-LRA
B. E. BLACKMON, WARDEN	)	
DEFENDANT	)	

MEMORANDUM OF LAW IN SUPPORT OF
THE 28 U. S. C. § 2241

Come now, Quitman Carter, moves this court pro se throught his motion and to construe my claim liberally pursuant HAINES V KERNER, 404 U. S. 519, 520, 30 L. ED. 2d 652, 92 S. CT. 594 (1972) and hereby grant my motion expedited consideration based upon recent case laws announced by the United States Supreme Court as the United States Court of Appeals for the Fifth Circuit in JOHNSON V UNITED STATES, 135 S. CT. 2551 (2015) and UNITED STATES V HORNYAK, 805 F. 3d 196 (5th cir. 2015).

This motion will identify why Johnson and Hornyak applies to my issue at hand, it will also address the reasons expedited consideration should be granted in this issue.

PROCEDURAL HISTORY:

(1) The United States District court for the Eastern District of Missouri entered a judgment of conviction against me on February 13, 2006, in UNITED STATES V CARTER, Case No. 1:05CR00105CDP, after I plead guilty to violating 18 U. S. C. § 922 (g)(1) for being a felon-in-possession of a firearm, punishable under 18 U. S. C. § 924(e)(1). I was sentenced for a

180-months of imprisonment, the mandatory minimum under the Armed Career Criminal Act (hereinafter ACCA). I am currently in federal custody at FCI YAZOO CITY LOW in Yazoo City, Mississippi, under Register Number 31889-044.

2. I did not appeals the judgment of conviction.

3. I filed a motion under 28 U.S.C. § 2255 on March 26, 2007, in QUITMAN CARTER V UNITED STATES, case number 1:07-CV-0049 CDP. The district court denied my motion as time barred and did not issue a certificate of appealability. I appealed the denial to the Eighth Circuit Court of Appeals in case number 13-1497. The court affirmed the district court's denial. I sought a certificate of appealability on 1:07-CV-49-CDP from the Eighth Circuit Court of Appeals in case number 14-1774, and the court denied this request and again affirmed the district court's denial of my habeas corpus petition because it was time barred.

I filed a second or successive motion under 28 U.S.C. §2255 with the district court on June 9, 2008, in case number 1:08CV0092CDP. The district court denied this petition because I had not been granted permission by the eighth Circuit Court of Appeals to file a second or successive habeas corpus petition. I filed another motion in this same case which the district court properly deemed another habeas corpus petition. The district court denied this petition on Novmber 14, 2008, as I had not been granted permission to file a second or successive habeas corpus petition. Therefore, I filed a petition with the Eighth Circuit Court of Appeals for permission to file a successive habeas corpus petition in case number 09-1035, and the court denied my request on March 18, 2009.

I filed another habeas corpus petition with the district court on

April 14, 2015, in case number 1:15-CV-0061CDP. The district court dimissed the petition for failure to obtain permission from the Eighth Circuit Court of Appeals to file a habeas corpus petition. I filed a motion for reconsideration with the district court thereafter, and the district court denied the request on May 15, 2015.

I filed a pro se application seeking permission to file a successive habes corpus petition with the Eighth Circuit Court of Appeals on January 28, 2016 in case number 16-1229 based on Johnson. The government filed its response in opposition on February 3, 2016. I filed my pro se reply on February 22, 2016. On May 9, 2016, the cour granted my request to appoint the Federal Public Defender to represent me on my application and gave me leave to file a supplemental pleading.

GROUNDS FOR RELIEF

4. I am being held in violation of the constitution and laws of the United States because Johnson announced a new constitution rule of made retroactive and substantive, in that it alter the class of persons punishable by the armed career criminal act (ACCA). WELCH V UNITED STATES, 136 S. CT. 1257 (2016). In light of JOHNSON V UNITED STATES, 135 S. CT. 2551 (2015), and MATHIS V UNITED STATES, 136 S. CT. 894 (June 23, 2016), I no longer has three prior convictions for a violent felony or serious drug offense, or both, under 18 U. S. C. §924(e). I am no longer an armed career criminal subject to imprisonment for a mandatory minimum fifteen (15) years.

There are five possible predicate offenses for ACCA purpose that were identified in my presentence report (hereiafter PSR). The government presented three of my prior conviction to the grant jury, which returned a one-count indictment. Three prior conviction the district court deemed to be a predicate offense that qualifed me as an Armed Career Criminal, that were necessary to trigger a mandatory minimum sentence under the ACCA, 18 U.S.C. § 924(e)(1). The three that were inserted in my indictment is identified as follows:

(a) A conviction for the felony offense of assault with intent to kill in Dunklin County, Missouri on Febraury 23, 1978. In case number 78665;

(b) A conviction for second degree burglary in Pemiscot, County, Missouri on June 1, 1982. In case number CR582-99FX;

(c) A conviction for involuntary manslaughter in Pemiscot County, Missouri on May 4, 1993. In case number CR593-97FX.

A. ACTUALLY INNOCENT OF THE ARMED CAREER CRIMINAL ACT BECAUSE NO LONGER HAVE QUALFYING PREDICATE OFFENSES

Under the actual innocence exception, I'm innocent of being an armed career criminal under the act. In McQUIGGIN V PERKINS, 133 S. CT. 1924 (2013), the court held that under this exception " a creditable showing of actual innocence may allow a prisoner to pursue his constitutional claims on the merits notwithstanding the existence of a procedual bar to relief.

The courts held that this is a "demanding" standard which requires that a prisoner present "evidence of innocence so strong that a court cannot have confidence in the outcome of a trial." id. at 1936 (citation omitted). This exception "apllies to a severely confined category: cases in which new evidence shows it is more than likely than not that a reasonable juror would have convicted the prisoner. The court held. My claim is based upon a decision made by the United States Supreme Court in JOHNSON V UNITED STATES, 136 S. CT. 2551 (2016), announcing a new rule of law that is retroactive and substantive in that it alters the class of persons punishable by the Armed Career Criminal Act (ACC) WELCH V UNITED STATES, 136 S. CT. 1257 (2016), also in DESCAMPS V UNITED STAES, 133 S. CT. 2276 (2013) and MATHIS V UNITED STATES, 136 S. CT. 894 (2016) interpretation of a new rule of constitutional law.

THE INDIVISIBILITY OF MISSOURI'S SECOND DEGREE BURGLARY STATUTE

Now let turn to the question of whether Missouri's second degree burglary statute is a divisible statute to which sentencing(Howard, F. 3d 1348) courts can apply the modified categorical approach. The elements of generic burglary under the ACCA are: (1) "an unlawful or unprivileged entry into, or remains in," (2) "a building or other structure," (3) "with intent to commit a crime." Taylor, 445 U.S. at 598. Section 569.170 of the Missouri Code provides that" [a] person commits the crime of burglary in the second degree when he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhahbitable structure for the purpose of committing a crime therein." Mo. Rev. Stat. §569.170. The statute appears to match all three elements of generic see UNITED STATES V BELL, 445 F.. 3d 1334 (8th cir. 2005). However, the term " inhabitable structure" is not limited to buildings: The statutory term "building" is defined as follows:

> Any structure which may be entered and utilized by person for business, public use, lodging, or the storage of goods, and such term includes trailers, sleeping cars, ships, airplanes, vehicles, includes such person living or carrying on business thereof: Mo. Rev. Stat. §569.010. A number of those things included in the definition of "building" (such as vehicles and ships) fall outside the "building or structure" element of generic burglary, making the burglary statute non-generic.

The key to determine divisibility, according to Descamps, is whether the "statute sets out one or more elements of the offense in the alternative-for example, stating that burglary involves entry into a building or an automobile." 133 S. CT. at 2281; see also id. at 2285 n.2 (indicating that a court may apply the modified categorical approach where the "state law is drafted in the alternative"). Nothing in the Missouri statute suggests its definition of "building" is drafted in the alternative.

Instead, Missouri Code §569.010 provides one definition of building and then included a non-exhausive list of things that fall under that definition. The statute defines "building" as "[a]ny structure which may be entered and utilized by persons for business, public use, lodging oor the storage of goods." Missouri Code §569.010. The statute specifies that the term "structure" in the definition of building "include any ships, airplanes, trailers, sleeping cars vehicles, lodging of person or persons carrying on business therein." id. (emphasis added). The items that follow each use of the word "includes" in the statute are non-exhausive examples of items that qualify as a "structure" and thus count as a "building under Missouri Code §569.010. See UNITED STATES V BANKHEAD, 746 F. 3d 323 (8th cir. 2013), and UNITED STATSE V LIVINGSTON, 442 F. 3d 1082 (8th cir. 2005) ("[W]here the drafters used the word 'includes' they intended to provide a non-exhaustive list of examples to clarify the meaning of the term.") (quotation omitted). The statutory definition of "building" does not say what is not included.

In light of the Descamps decision, illustrative examples are not alternative elements. See UNITED STATSE V CABRERA-UMANZOR, 728 F. 3d 347, 353 (4th cir. 2013)(holding that a statute was indivisible under Descamps where the acts of sexual abuse listed in the statute "[we]re not elements of the offense, but served as a non-exhaustive listed of various means by which the elements of sexual molestation or sexual exploitation can be committed"). As a result, the statute is non-generic and indivisible, which means that a conviction under Missouri Code §569.010 cannot qualify as generic burglary under the ACCA. See DESCAMPS, 133 S. CT. at 2292 (explaining that a defendant "is never convicted of the generic crime" where an "overbroad" indivisible statute is involved).

On June 23, 2016, the Supreme Court announced in MATHIS V UNITED STATES, 136 S. CT. 894 (2016), holding that depending on founded facts from a presentence report in an Armed Career Criminal Act case violates the Sixth Amendment and is irreconcilable with APPRENDI. The court also held that ACCA improperly allow the judges to make a finding that raises a defendant's sentence beyond the sentence that could have been lawfully imposed by reference to facts found by the jury or admitted by the defendant."

Mathis court have limited the situations in which courts make factual determination about prior concvictions. The court explained the means of committing an offense are nothing more than "various factual ways of committing some component of the offense." The court also held that permitting judges to determine the means of committing a prior offense would expand ALMENDAREZ-TORRES. Therefore, the court refused to allow the judges to determine, without jury, which alternative means supported a defendant's prior convictions.

The district court erred by finding that Missouri statute was divisible and by applying the modified categorical approach to determine the nature of my conviction. Because the elements of Missouri's burglary law are broader than those of generic burglary, my prior conviction cannot give rise to ACCA's sentence enhancement, see MATHIS, 136 S. CT. at 894. This issue is resolved by the Supreme Court's precedents, which have repeatedly held, and in no uncertain terms, that a state crime cannot qualify as an ACCA predicate if its elements are broader than those of a listed generic offense. See e.g., Taylor, 495 U. U. at 602. The "underlying brute facts or means" by which the defendant commits his crime, RICHARDSON V UNITED STATES, 526 U. S. 813, 817, make no difference: even if the defendant's conduct, in fact, fits within the difinition of the generic offense, the mismatch of elements saves him from an ACCA sentence. ACCA requires a sentencing judge to look only to the elements of the [offense], not to the facts of [the] defendant's conduct." Taylor, 495 U. S., at 601.

The United States Supreme Court, on June 23, 2016 changed the diagram in the way lower courts applies a sentence in a criminal case. The Supreme Court also held that construing ACCA to allow sentencing judges to go any further would raise serious Sixth Amendment concern because only a jury, not a judge may find facts that increases the maximum penalty, APPRENDI V UNITED STATES, 503 U. S. at 466.

Under the Mathis decision, it made clear that my prior Missouri conviction for second degree burglary no longe qualifies as ACCA predicate offense, meaning that my imprisonment is false and the penalty is beyond the statutory maximum 10-years allowed by law for violating §§ 922(g)(1) and 924(a)(2).

B. MY 1993 MISSOURI CONVICTION FOR INVOLUNTARY MANSLAUGHTE IS NO LONGER AN ACCA PREDICATE OFFENSE UNDER JOHNSON.

My 1993 conviction in the state of Missouri for involuntary manslaughter can no longer serve as support under the ACCA. This conviction was based on a violation of Mo. Re. Stat. §565.024 (1993). The statute reads as follows:

1. A person commits the crime of involuntary manslaughter

if he:

2. Recklessly causes the death of another person;
3. While in an intoxicated condition operates a motor vehicle in this state, and when so operating, acts with criminal negligence to cause the death of any person.

My information from the conviction for involuntary mansluaghter show that I was convicted for violating subdivision (2) of Mo. Rev. Stat. § 565.024, in that I was operating a car with criminal negligence and caused the death of another person. Criminal of strict liability and negligence are not crime of violence under the residual clause because they are not purposeful, violent and aggressive. See BEGAY V UNITED STATES, 128 S. CT. 1581 (2008). In Begay, the Supreme Court cited Leocal (stating that the word "use" [in "use of force"] most naturally suggests a higher degree of intent than negligent or merely accidental conduct which fact helps bring it outside the scope of the statutory term " crime of violence". Begay at 145. Under Begay, my conviction for involuntary manslaughter does not count as a predicate offense under the ACCA. However, Begay was decided two years after I was convicted as an Armed Career Criminal. The conviction was considered by the district court at sentencing as a predicate offense under the residual clause of the ACCA. The government cessed its argument that my involuntary manslaughter counts as a violent felony on May 28, 2010. See CARTER V UNITED STATES, case number 10-1237, after stating that my prior conviction for involuntary manslaughter could no longer be classified in light of Begay, and that I could still be classifed as an Armed Career Criminal because I had another prior conviction for attempted murder in my presentence report (PSR¶26).

The district court refused to vacate and remand for resentencing, and giving the government the opportunity to argued that I had other prior that could continue my incarceration under the ACCA sentence enhancement. Instead, the court allowed the government to argue a prior that was not submitted to the grant jury. In MATHIS V UNITED STATES, 136 S. CT. at 894. A judge is no longer allowed to determine a prior conviction without a jury, which alternative means supports a defendant's prior convictions.

C. MY 1978 ILLINOIS CONVICTION FOR UNLAWFUL USE OF WEAPON NO LONGER COUNTS AS AN ACCA PREDICATE UNDER JOHNSON.

My 1978 conviction in illinois for unlawful use of a weapon (PSR¶26) count-one under case number INF 78-1270 no longer counts as a predicate offense under the ACCA. The conviction is based my violation of Illinois Compiled Statute Annotated (hereinafter ILCS) 5/24-1 (1978). Though my conviction for violating that statute may have counted under the residual clause of the ACCA at the time of my sentencing for felon-in-possession of a firearm. The conviction no longer qualifies under the residual clause in light of the Supreme Court's decision in JOHNSON V UNITED STATSE, 136 S. CT. 2551 (2015). As the offense is not an "enumerated offense" under the ACCA 18 U. S. C. §924(e)(2)(B)(ii). The question now comes, whether the conviction qualifies under the "force clause" of the ACCA , as that is the only remaining provision under the ACCA applicable to the conviction.

The Illinois Compiled Statute 5/24-1 (1978) is an extensive statute with (1) subdivisions. None of which have, as an element, the use, attempted use or threatened use of physical force against another person as required by the force clause of the ACCA. 18 U.S.C. §924(e)(2)(B)(i).

Therefore, my conviction under the Illinois statute at issue does not count as a violent felony under the ACCA. In the government response to my application to file a successive habeas petition. The government stated that my status as an Armed Career Criminal still stands.

D. MY 1978 CONVICTION FOR ATTEMPTED MURDER NO LONGER COUNTS AS AN ARMED CAREER CRMINAL PREDICATE JOHNSON.

My 1978 conviction in Illinois for attempted murder (PSR¶26) count-two in case number INF 78-1270 no longer qualify as a predicate offense under the ACCA in light of Johnson and Mathis. This conviction is based on the violation of Illinois Compiled Statute § 8-4. Said statute reads in part

Section 8-4 Attempt.

1. A person commits an attempt, when, with intent to commits therein a felony or theft (see ex-A).

The pleas proceedings and judgment before the Circuit Court of Cook County, Illinois for my attempted murder shows that I pled guilty to the crime and was convicted under the Illinois Compiled Statute Annotated Chapter 38, section 8 para 4 in manner and for as charged in the information (see ex-B). Understanding the exact statue I was convicted under is crucial in order to analyze whether my conviction now qualifies as a predicate offense under the enumerated offense clause or force clause of the ACCA. A conviction for the crime of attempt in violation of ILCS 5/8-4 (1978) is not a predicate offense under the enumerated offense clause of the ACCA.

18 U.S.C. §924(e)(2)(B)(i)(subparagraph (i)") requires that the predicate offense's element of "physical force" involve "violent force that is, force capable of causing physical pain or injury to another person. See JOHNSON V UNITED STATES, 130 S. CT. 1265 (2010)(holding that the crime of battery by offensive touching does not satify the ACCA).

Attempt is not a predicate offense under the residual clause because it is not a listed crime in 18 U.S.C. §924(e)(2)(B)(ii). §924(e)(2)(B)(ii) (subparagraph (ii)") requires that a predicate offense be similar in kind to the listed offenses-meaning that it must involve "purposeful, violent, and aggressive conduct, BEGAY V UNITED STATES, 128 S. CT. 1581(2008), My attempt conviction does not fall in that category.

The crime attempt does not have, as an element, the use, attempted use or threatened use of physical force against the person of another as required under (subparagraph (i)") of §924(e)(2)(B). Neither does it "otherwise" involves conduct that present a serious potential risk of physical injury to another as require under (subparagraph (ii)") §924(e)(2)(B). My violation of Illinois' attempt statute cannot be deemed attempt to use force under the clause of the ACCA simple because my state statute of conviction contain the word "attempt." The analysis hinges on an inquiry into the actual elements of ILCS 8-4 and not the facts that comprised my conviction. TAYLOR V UNITED STATES, 495 U. S. 575, 600 (1990).

Now turning to the second element of the crime attempted murder. If the word murder be removed from attempted. There would be only one state statute the murder statute § 9-1, this statute provides in pertinent part:

Ill. Rev. Stat., ch 38, § 9-1;

> (a) A person who kills an individual without lawful justification commits murder if,in performing the acts which cause the death:
>
> (1) He either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or...
>
> (3) He is attempting or committing a forcible felony other than voluntary manslaughter.

Ill. Rev. Stat., ch 38, § 8-4;

> (1) A person committs the offense of attempt with the intent to commits therein a felony or a non-exhausted of crimes or felonies.

It is stated in Illinois, to prove attempted murder, the prosecution must prove that with intent to kills, a defendant committed an act which constitute a substantial step toward the commission of the murder. If intent is not admitted by the defendant, it can be inferred from the circumstances surrounding the crime, such as the character of the assault and the use of a deadly weapon. Intent can also be inferred when the dendant voluntary commite an act, the natural tendency of which is to destroy another person's life. The act of firing a gun at another leads to the inferrence that the defendant acted with intent to kill. Moreover, the act of firing shot at a person amounts to a substantial step toward the commission of a murder, fulfiling the second element of the crime of attempted murder. See ALEXANDER V NELSON, case No. 95 C 5255 (N. DIST. OF ILL. 1996).

The phrase "substantial step" is used in the definition of attempt in ILCS 8-4 (1978). The term "sudstantial step" is well defined in Illinois law, and the definition does not automatically involve the use, attempted use or threatened use of physical force. Federal law must defer to State law on statutory interpretation. Under Illinois law, conduct shall not be held to constitute a substantial step...unless it is strongly corroborative of the actor's criminal purpose. PEOPLE V JILES, 364 ILL. APP. 320, 955 (2006). Precisely what is asubstantial step must be determined by evaluating the facts and circumstances of each particular case. Jiles at 956 citing PEOPLE V SMITH, 148 ILL. 2d 454, 459 (1992). My conviction for attempt undoubtedly would have qualified under the residual clause of the ACCA prior to Johnson as the commission of a substantial act with the intent to commit murder obviously otherwise involves conduct that presents a serious potential risk of physical injury to another. However, now that Johnson has invalidated the residual clause, a technical analysis of the elements of the exact statute of my attempt conviction is necessary. It is not a complicated analysis as the elements of attempt under ILCS 8-4 (1978(are devoid of the mention of any use, attempted use or threat of use of physical force as required by the force clause of the ACC, 18 U.S.C. §924(e)(2)(B)(i).

To commit attempted murder a person have to take a substantial step toward committing murder by firing a gun at another, which leads to the inference that the defendant acted with an intent to kill. The act of firing shots at a person amount to a substantial step toward the commission of murder, fulfill the elements of the crime of attempted murder. My presentence report (PSR¶26) mention nothing about firing a gun at a person or persons. The Illinois law requires that a victim be injury before a charge of "ATTEMPT TO MURDER" be bought against the defendant. Its requires that defendant either attempt to kill or do bodily harm or know that this acts creats a strong probability of death or bodily harm, in order to be charged with "ATTEMPTED MURDER." See Illinois Revised Statute Chapter 38, para. 9-1 (1981) UNITED STATES V O'LEARY WARDEN, case No. 88 C 1368 (N. DIST. ILL. (1988).

The Seventh Circuit also held in BENTON V WASHINGTON, case number 97 C 449 (N. Dist. of Ill. 1998), attempted murder occur when an individual with the intent to kill, does any act which constitutes a substanial step toward the commission of murder. See 720 Ill. Comp. Stat. 8-4 (1978).

28 U.S.C § 2255 REMEDY IS INADEQUATE OR INEFECTIVE TO TEST THE LEGALITY OF MY DETENTION

§ 2255 (e) states in full:

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained, if it appears that the applicant has failed to apply for relief by motion to the court which sentenced him, or such court has denied him relief, unless it appear that the remdy by motion is inadequate or ineffective to test legality of his detention. 28 U.S.C. § 2255(e).

On Novmber 28, 2005, I pled guilty to being a felon-in-possession of firearm which carried a maximum penalty of life imprisonment under §924 (e) §4B1.4 (a)(3)(B). At the sentencing hearing, the district court did classified me as an Armed Career Criminal under § 924(e)(1). The Armed Career Criminal Act statute increased my offense level and criminal histroy category yielding a guidelines range of 151 to 188 months imprisonment. The district court sentenced me to 15-years imprisonment. Importantly, this sentence of 15-years was less than my statutory maximum of life imprisonmett for being in possession of a firearm with three prior convictions.

On March 26, 2007, I filed my first § 2255 motion to challenge my Armed Career Criminal status under §924 (e). The district court denied me as time barred and did not grant a certificate of appealability.

I invoke the saving clause because it allow me the opportunity to file a § 2241 habeas petition in the district court where i'm incarcerated. The saving clause covers my actually innocent claims because I was convicted of a crime which a retroactively applicable Supreme Court decision has overturned prior circuit precedent.

The courts held, the standard of review is "whether a prisoner may bring a 28 U.S.C. § 2241 petition under the saving clause of §2255(e) is a question of law the courts review de novo." WILLIAMS V WARDEN, FED. BUREAU OF PRISON, 713 F. 3d 1332, 1343 (11th cir. 2013). The petitioner bears the burden of demonstrating that the § 2255 remedy is "inadequate or ineffective to test the legality of his detention" for the purpose of 28 U.S.C. § 2255(e).

My remedy by motion is inadequate or ineffective to test the strenge of my imprisonment, because (1) my claim "is based on a retroactively applicable Supreme Court decision;" (2) " the holding of the Supreme Court decision have established that I was convicted of a non-existent offense;" and (3) "the Eighth Circuit law foreclosed my claim at the time it should have been raised in my first § 2255 motion."

The court held that the above analysis asserted in WOFFORD, 177 F. 3d at 1244, GILBERT, 640 F. 3d at 1225 covers actaully innocent challenge akin to the post-Bailey 2241 petition, such as when a Supreme Court decision subsequent to convictions, means that a petitioner's offense conduct is no longer criminal see Williams, 713 F. 3d at 1343. Wofford court observed in dicta, that the saving clause "might apply to some claims involving a "fundamental defect' in sentencing where the petitioner had not had an opportunity to obtain judicial correction of the defect earlier." Wofford, 177 F. 3d at 1244 (quoting Davenport, 147 F. 3d at 611).

Courts has declined to decide, however, "whether the saving clause extends to [such] sentencing claims...or what a 'fundamental defect' in a sentence might be." Id. at 1244-45. The court said that it is enough to hold, as it do, that the only sentencing claims that may conceivably be cover by the saving clause are those based upon a retroactively applicable Supreme Court decision overturning circuit precedent." Applying those principles, the court would conclude that the saving clause does not cover my claim, because (1) I was convicted of crimes which a retroactively applicable Supreme Court decision overturned prior cicuit precedent, that made clear my sentence is nonexistent"; (2) each one of my sentencing claims rest upon a "crucial circuit law-busting, retroactively applicable Supreme Court decision."

According to the courts, I bears the burden of coming forward with evidence of an affirmatively showing of inadequacy or ineffectiveness of the 2255 remedy. In McQUIGGIN V PERKINS, 133 S. CT. 1924 (2013); the Supreme Court held that my claim of actaul innocence can overcome the AEDPA statute of limitation in order to prevent a miscarriage of justice.

The Supreme Court also explained, that in the context of procedural default, a miscarriage of justice exception means, the federal habeas corpus court may still review an otherwise precedural default claim upon a showing, and if a failure to review the federal habeas claim will result in a "miscarriage of justice." Generally this exception will apply only in extraordinary cases, i.e, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, MURRAY V CARRIES, 477 U. S. 478 (1986).

In according to federal law and the constitutions under the Bill of Rights, I have established a miscarriage of justice and that it is more likely than not that no reasonable juror would have convicted and sentenced me to imprisonment under a nonexistent sentence. See SCHLUP V DELO, 513 U. S. 298 (1995).

It is true that the § 2255(e) motion is inadequate or ineffective to test the legality of my detention because of circuits law foreclosed all my claim at the time I should had raised them.

CONCLUSION

The Armed Career Criminal Act, 18 U. S. C. § 924(e) prescribes a mandatory minimum sentence of 15-years for a person who violates 18. S.C. § 922(g) and has three previous conictions for a violent felony or a serious drug offense. 18 U. S. C. §924(e)(1). The Act defines a "violent felony" to means any felony, whether state or federal, that has as an element the use, attempted use, or threatened use of physical force against the person of another, or that is burglary, arson, or extortion, involves the use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another 18 U.S.C. §924(e)(2)(B).

The government has failed to prove that my status of being an Armed Career Criminal still remains, and the court manifested a miscarriage of justice when it denied my application to file a successive motion in the U. S. District Court in light of the intervening change in law in DESCAMPS V UNITED STATES, 133 S. CT. 2276 (2013), and JOHNSON V UNITED STATES, 135 S. CT. 2551 (2015).

My status of being an Armed Career Criminal no longer exist, I'm innocent of the underlying offense for these following reasons:

(1) My prior conviction for involuntary manslaughter and Unlawful use of a weapon count-one/ Attempted murder count-two no longer qualify as predicate offenses under the United States Supreme Court's decisions in JOHNSON V UNITED STATES, 136 S. CT. 2551 (2015) including the U.S.Court of Appeals interpretation of the change in law in WOODS V UNITED STATES, 805 F. 3d 1152 (8th cir. 2015); BANKHEAD V UNITED STATES, 746 F. 3d 323 (8th cir. 2013): and

(2) My Missouri conviction for second degree burglary can no longer support the Armed Career Criminal Act enhancement under the Supreme Court interpretation of states burglary statutes in DESCAMPS V UNITED STATES, 133 S. CT. 2276 (2013) and the new ruling on June 23, 2016, in MATHIS V UNITED STATES, 136 S. CT. 894 (2016)(the enumerated clause does not cover state burglary offense whose elements are broader than the generic definit-

ion of burglary). Missouri burglary offense is broader than generic burglary.

Second degree burglary in Missouri is comparable to the second degree burglary laws from Alabama, Texas, Washington, and Florida, because a defendant is never convicted of the generic crime where an "overbroad" indivisble statute is involved. The above mention states burglary statute are non-generic and indivisible. See UNITED STATES V LOCKETT, 810 F. 3d 1262 (11th cir. 2016), UNITED STATES V HORNYAK, 805 F. 3d 196 (5th cir. 2015), and UNITED STATES V HOWARD, 742 F. 3d 1334 (11th cir. 2014). Also UNITED STATES V SNYDER, 5 F. Supp. 3d 1258 (9th cir. 2014). These statutes of conviction sets out a single offense of second degree burglary that requires unlawfully entering or remaining in a building.

The definition of "building," provides alternative means of committing that crime, but does not defines functionally separates crimes. Therefore these statutes are indivisible.

Applying the Descamps decision to Missouri's statute § 569.010, it is textually indivisible as between unlawfully entering and breaking and entering a "building or other structures." The portion of the statute under which I was convicted encompassed both conduct that is and conduct that is not generic offenses. JOHNSON V UNITED STATES, 135 S. CT. 2551 (2015), WELCH V UNITED STATES, 136 S. CT. 1257 (2016), and WOODS V UNITED STATES, 805 F. 3d 1152 (8th cir. 2015). The ruling in these cases has altered my classification as an Armed Career Criminal. My second degree burglary, involuntary manslaughter, and unlawful use of a weapon/attempted murder conduct does not present a serious potential risk of physical injury to another, of the same order of magnitude as the risks associated with the listed enumerated offenses in 18 U. S. C. § 924(e)(2)(B)(ii).

My status as an Armed Career Criminal under the Act no longer exist. I am now serving a nonexistent sentence in violation of the constitution and law of the United States because there have been an intervening change in law since my sentencing in 2006.

The United States Attorney, Richard G. Callahan along with the Assistant United States Attorney Keith D. Sorrell, and Warden B. E. Blackmon acting through the United States Government under the color of law with the apparent authority of the United States Department of Justice is violating my Fourth, Fifth, Eighth, and Fourteenth Amendment rights under the United States Constitution, in violation of 28 U.S.C. §1331.

The acts of the defendants that constitute deprivation of my civil rights are the basis of the claims in this action include: Denial of the Fourth and Fourteenth Amendment rights:

i. By unlawfully and wrongfully holding me without justification of law, causing me unlawful detention and incarceration under a serious charge that they know is false and illegal, because under the new rule of law that is retroactive and substantive under the United States Supreme Court's decision my sentence is illegally imposed. It means that I am being falsely held imprisonment under a nonexistent sentence. A violation of §§ 922(g) and 924(a)(2) only carry a statutory maximum of 10-years without three prior predicate offenses. The court altered the classification of my status as an Armed Career Criminal, due to the ruling in recent Supreme Court cases.

ii. By unlawfully and wrongfully holding me person in clear violation of my due process. The due process clause of the Fourteenth Amendment prohibits Mr Callahan, Mr. Sorrell and Mr. Blackmon from depriving me of liberty interest by interferring with my constitution protected rights. See SANDIN V CONNER, 515 U. S. 472 (1995)(the punishment I am receiving is an atypical and significant hardship than other petitioners who have a Johnson and Descamps issue.

Denial of my Fifth and Fourteenth Amendment rights:

i. By knowingly and willfully submitting false information regarding the qualification of the prior predicate offenses used to apply the Armed Career Criminal Act against me, claiming that Johnson or Descamps had no impact on whether any of my prior convictions qualify under the residual clause that the Supreme Court held is unconstitutionally vague, that the ruling in Descamps did not disturb my status as an Armed Career Criminal under the Act.

Whereas: I prays that this court will give expedited consideration and grant him relief because the three prior predicate offenses asserted in the 2241 and this memorandum in support is a non-generic burglary and do not properly form a basis for ACCA sentencing enhancement. With the residual clause no longer applicable. I have established a sentencing innocence claim (ie. that I am innocent of the ACCA enhanced sentence) and is serving an illegal sentence under the ACCA in violation of the due process clause.

I am requesting immediate condition relief on the grounds that the Supreme Court decision in BEAGY V UNITED STATES, 128 S. CT. 1581 (2008); DESCAMPS V UNITED STATES, 133 S. CT. 2276 (2013); JOHNSON V UNITED STATES, 135 S. CT. 2551 (2015); WELCH V UNITED STATES, 136 S. CT. 1257(2016); and the recent case law, MATHIS V UNITED STATES, 136 S. CT. 894 (2016) and have already served over 11-years for an offense that carried a statutory maximum of 10-years.

Dated on this 18th day of July 2016

Respectfully Submitted By

Quitman Carter

Quitman Carter #31889-044

FCC Yazoo Low
P. O. Box 500
Yazoo City, Ms 39194

CERTIFICATE OF SERVICE

I, declare (or certify, verfy, or state) under penalty that a true and correct copy of the 28 U. S. C. § 2241 motion was placed in the Yazoo City FCC lowa mailroom, first class paostage prepaid on this 18th day of July 2016

[s] Quitman Carter

Quitman Carter pro se
Yazoo FCC Low
P. O. Box 5000
Yazoo City, Ms 39194

Footnotes

*

1

The Illinois Criminal Code, Ill.Rev.Stat., ch. 38, § 9-1(a) (1979), provides in pertinent part that:

a) A person who kills an individual without lawful justification commits **murder** if, in performing the acts which cause the death:

1) He either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or . . .

3) He is **attempting** or committing a forcible felony other than voluntary manslaughter.

It is settled in Illinois, as declared by the Illinois Supreme Court, that under Section 9-1(a) "(t)here is but one crime of **murder**" and not three separate offenses. People v. Allen, 56 Ill.2d 536, 543, 309 N.E.2d 544, 547, cert. denied, 419 U.S. 865, 95 S. Ct. 120, 42 L. Ed. 2d 102 (1974). Accordingly, under Illinois law, intent **murder** and felony **murder**, Sections 9-1(a)(1) and 9-1(a)(3) respectively, constitute alternative bases for a **murder** conviction.

2

The indictment read as follows:

COUNT NO. I

Clarence Eugene Wilson . . .

. . . committed the offense of **Murder**, in that he, intentionally and knowingly shot and killed William Jackson Fancil with a gun, without lawful justification, in violation of Chapter 38, Section 9-1, of the Illinois Revised Statutes 1969.

COUNT NO. II

Clarence Eugene Wilson . . .

. . . committed the offense of **Murder**, in that he, intentionally and knowingly shot and killed William Jackson Fancil with a gun, without lawful justification, while **attempting** to commit the offense of Burglary, in violation of Chapter 38, Section 9-1, of the Illinois Revised Statutes 1969.

COUNT NO. III

Clarence Eugene Wilson . . .

. . . committed the offense of **Attempt**, in that Clarence Eugene Wilson, with the intent to commit the offense of Burglary, he, without authority, intentionally and knowingly **attempted** to enter the building . . . with the intent to commit therein a felony or theft, in violation of Chapter 38, Section 8-4, of the Illinois Revised Statutes 1969.

Crawford County Circuit Court, June 10, 1970, Respondent's Appendix ("R.A.") at 1-4.

3

The proceedings subsequent to the Wayne County trial and prior to our consideration of Wilson's first habeas petition are set out in detail in United States ex rel. Wilson v. Warden Cannon, Stateville Penitentiary, 538 F.2d 1272, 1274-75 (7th Cir. 1976), and in People v. Wilson, 61 Ill.App.3d 1029, 18

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3188504

MORGAN M. FINLEY, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

ADULT DIVISION

Mittimus Imprisonment to A State Penal Inst...

UNITED STATES OF AMERICA

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPT. CRIMINAL DIV/DI

Pleas, Proceedings and Judgments, before the Circuit Court of Cook County, Illinois

located at 2600 S. CALIFORNIA, CHICAGO, (Address) , Illinois, Branch ___ on 5 / 15 / 7[illegible] (Mo.) (Day) (Yr.)

Present: Honorable FRED SURIA JR.

One of the Judges of the Circuit Court of Cook County

Attest: MORGAN M. FINLEY, CLERK

BERNARD CAREY, States Atto
RICHARD J. ELROD, Sheriff

THE PEOPLE OF THE STATE OF ILLINOIS (Plaintiff)

Indictment or Case # INF 78-1270

v. QUITMAN CARTER (Defendant)

UNLAWFUL USE OF WEAPONS, ETC.,

1. CHARGE: Chapter 38 Section 24-1 Paragraph (a-&7) of the Illinois Revised Statutes

The Offense of UNLAWFUL USE OF WEAPONS, IN MANNER AND FORM AS CHARGED IN THE INFORMATI[ON]

The defendant WAS (was) (was not) represented by an attorney.

The court adjudged defendant guilty on the PLEA (plea) (finding) (verdict)

The following sentence IS NOT (is) (is not) a condition of probation

(Enter the sentence in the appropriate paragraph 1 or 2 below)

TO THE ADULT DIVISION:

BECAUSE OF THE JUDGMENT OF GUILTY IT IS ORDERED THAT

THE DEFENDANT QUITMAN CARTER is sentenced for the DEFINITE T[ERM]

of XXXXXXXX or the term of not less than TWO YEARS (2) nor more than XXXX and committed to the custody o[f the]

Adult Division of the Department of Corrections for confinement in the DEPARTMENT OF CORRECTIONS

2. CHARGE: Chapter 38 Section 8 Paragraph 4 of the Illinois Revised Statutes

The Offense of ATTEMPTED MURDER, IN MANNER AND FORM AS CHARGED IN THE INFORMATION

TO THE ADULT DIVISION:

BECAUSE OF THE JUDGMENT OF GUILTY IT IS ORDERED THAT

THE DEFENDANT QUITMAN CARTER is sentenced for the DEFINITE T[ERM]

of XXXXXXXXX or the term of not less than SIX YEARS (6) nor more than XXXXXXXXXX and committed to the custody o[f the]

Adult Division of the Department of Corrections for confinement in the DEPARTMENT OF CORRECTIONS

3. CHARGE: Chapter 38 Section 8 Paragraph 4 of the Illinois Revised Statutes

The Offense of ATTEMPTED MURDER, IN MANNER AND FORM AS CHARGED IN THE INFORMATION

TO THE ADULT DIVISION:

BECAUSE OF THE JUDGMENT OF GUILTY IT IS ORDERED THAT

THE DEFENDANT QUITMAN CARTER is sentenced for the DEFINITE [TERM]

of XXXXXXXXXX or the term of not less than SIX YEARS (6) nor more than XXXXXXXXXX and committed to the custody [of the]

Adult Division of the Department of Corrections for confinement in the DEPARTMENT OF CORRECTIO[NS]

The SHERIFF OF COOK COUNTY is commanded to take the defendant QUITMAN CARTER into his custody and deliver (him) (her) to the aforesaid Department of Corrections.

The DEPARTMENT OF CORRECTIONS is commanded to take the defendant QUITMAN CARTER and co[nfine] (him) (her) in the manner provided by law until the above sentence is fulfilled.

STATE OF ILLINOIS }
COUNTY OF COOK } SS. I, MORGAN M. FINLEY, CLERK OF THE COURT, do hereby certify that the above and foregoing to be a true, perfec[t and] complete copy of certain proceedings had and entered of record in said Court, in the case of

THE PEOPLE OF THE STATE OF ILLINOIS (Plaintiff)

EXHIBIT-B

v. QUITMAN CARTER (Defendant)

Witness: Morgan M. Finley, Clerk of the Court and the seal thereof,

at CHICAGO, (City, Town or Village), Illinois on 5 / 15 / 78 (Mo.) (Day) (Yr.)

TO THE SHERIFF OF COOK COUNTY TO EXECUTE

E.R.

Deputy C[lerk]